

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF NEW MEXICO**

ROBERT STARKS,

Plaintiff,

vs.

No. CIV 98-0630 JC/WWD (ACE)

RANDOLPH “DUKE” WHITE, et al.,

Defendants.

**MEMORANDUM OPINION AND ORDER**

THIS MATTER comes before the Court upon Defendant White’s Application for Default Judgment or Alternatively to Dismiss with Prejudice and Motion to Strike, filed July 26, 1999 [*Doc. 128*]. Defendant White bases this motion on his allegations that Plaintiff’s Second Amended Complaint was not timely served and the Second Amended Complaint was not properly signed as required by FED. R. CIV. P. 11.

**A. The Timeliness of the Second Amended Complaint**

On May 26, 1999, this Court entered a Memorandum Opinion and Order [*Doc. 97*] which gave Plaintiff 20 days to file and serve the Second Amended Complaint. In fact, the Second Amended Complaint [*Doc. 102*] was both timely filed, on June 15, 1999 and served on Defendant White by mail, on June 14, 1999, as indicated by the Certificate of Service. These circumstances indicate that Defendant White’s untimeliness argument is without merit.

**B. Rule 11 Signature on the Second Amended Complaint**

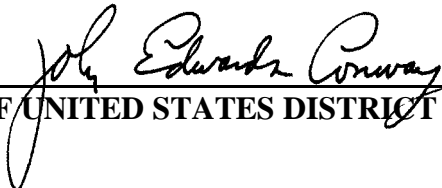
Rule 11 states that “[e]very pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney’s individual name, or, if the party is not represented by an attorney, shall be signed by the party.” The Second Amended Complaint is signed by Charlotte Hetherington, and telephonically approved by Robert L. McHaney and Rodney L. Schlager. Ms. Hetherington entered a limited appearance on behalf of Plaintiff on December 2, 1999 [*Doc. 42*], while Mr. Schlager entered an appearance on Plaintiff’s behalf on July 14, 1998 [*Doc. 11*]. Mr. McHaney has represented Plaintiff since the inception of this case.

Although this Court initially questioned Ms. Hetherington’s representation of Plaintiff in its May 26, 1999 Memorandum Opinion and Order, Ms. Hetherington has since cleared up any confusion regarding her representation. *See* Notice of Substitution, filed September 3, 1999 [*Doc. 148*]. Such being the case, her signature on the Second Amended Complaint is appropriate and not in violation of Rule 11. Furthermore, any representation Ms. Hetherington makes as to the telephonic approval of the other counsel is subject to the New Mexico Rules of Professional Conduct and Lawyer’s Creed which require attorney candor to the Court. *See* D.N.M.LR-Civ. 83.9 (attorneys practicing in this Court must adhere to the New Mexico Rules of Professional Conduct and the Lawyer’s Creed); Rule 16-303 of the New Mexico Rules of Professional Conduct. There is no indication that Ms. Hetherington’s representation that she obtained telephonic approval of Mr. McHaney and Mr. Schlager is in any way dishonest. For these reasons, I find that Defendant White’s Rule 11 argument is without merit. I further conclude that Defendant White’s Application for Default Judgment, or Alternatively to Dismiss with Prejudice, and Motion to Strike is not well taken and should be denied.

Wherefore,

IT IS ORDERED that Defendant White's Application for Default Judgment, or Alternatively to Dismiss with Prejudice, and Motion to Strike, filed July 26, 1999 [*Doc. 128*] is **denied**.

DATED this 30<sup>th</sup> day of September, 1999.

  
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CHIEF UNITED STATES DISTRICT JUDGE

Counsel for Plaintiff: Charlotte H. Hetherington  
Simons, Cuddy & Friedman, L.L.P.  
Santa Fe, New Mexico

Janice M. Ahern  
Ahern & Hyatt, P.A.  
Santa Fe, New Mexico

Robert L. McHaney, Jr.  
Waco, Texas

Richard C. Civerolo  
Lisa Pullen  
Civerolo, Gralow & Hill, P. A.  
Albuquerque, New Mexico

Defendants *pro se*: Randolph "Duke" White  
Mesita, Colorado

William Logan  
Three Rivers, California

Dave Cordova  
Garcia, Colorado

Counsel for United States: John W. Zavitz, AUSA  
U. S. Attorney's Office  
District of New Mexico  
Albuquerque, New Mexico